

**LORI HARPER SUEK**  
**Assistant U.S. Attorney**  
**U.S. Attorney's Office**  
**James F. Battin U.S. Courthouse**  
**2601 Second Ave. North, Suite 3200**  
**Billings, MT 59101**  
**Phone: (406) 657-6101**  
**FAX: (406) 657-6989**  
**E-Mail: Lori.Suek@usdoj.gov**

**ATTORNEY FOR PLAINTIFF**  
**UNITED STATES OF AMERICA**

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF MONTANA**  
**BILLINGS DIVISION**

|                                  |                         |
|----------------------------------|-------------------------|
| <b>UNITED STATES OF AMERICA,</b> | <b>CR 18-32-BLG-SPW</b> |
| <b>Plaintiff,</b>                |                         |
| <b>vs.</b>                       | <b>OFFER OF PROOF</b>   |
| <b>ROBERT JOHN BIGBACK,</b>      |                         |
| <b>Defendant.</b>                |                         |

The defendant, Robert John Bigback, is charged by indictment with two counts of distribution of methamphetamine, in violation of 21 U.S.C. § 841(a)(1).

## **PLEA AGREEMENT**

There is no plea agreement. Bigback will plead guilty to the indictment. Resolution of the case without a plea agreement is the most favorable resolution for Bigback. *See Missouri v. Frye*, 566 U.S. 134, 145-46 (2012).

## **ELEMENTS OF CHARGE**

In order for Bigback to be found guilty of distribution of methamphetamine, as charged in counts I and II of the indictment, the United States must prove each of the following elements beyond a reasonable doubt:

First, the defendant delivered methamphetamine to another person; and

Second, the defendant knew that it was methamphetamine or some other controlled substance.

Additionally, while not a formal element of the offense, the government would also have to prove beyond a reasonable doubt that the defendant distributed 5 or more grams of actual methamphetamine.

## **PENALTY**

Each count carries a mandatory minimum punishment of five years to 40 years imprisonment, a \$5,000,000 fine, at least four years of supervised release, and a \$100 special assessment.

## **ANTICIPATED EVIDENCE**

If this case were tried in United States District Court, the United States would prove the following:

On April 19, 2017, confidential informant (CI) contacted the Billings drug task force and advised that he/she could purchase an ounce of methamphetamine for \$1300 from Avis Blacksmith, the co-defendant. The CI provided Blacksmith's phone number and, through the local Law Enforcement Records Management System (LERMS), the task force confirmed that Blacksmith was using the phone number provided by the CI. Further, the task force used the phone number to search Facebook. The phone number was linked to an account for "Avis Marie." The account had a photograph. The task force showed the CI the photograph and the CI confirmed it was the person he/she knew as Avis.

On April 24, 2017, the Billings drug task force used the CI to purchase approximately 23 grams of methamphetamine from Blacksmith for \$1200. The purchase took place at the Ace Hardware store located in Billings Heights. Blacksmith was the passenger in a truck driven by Bigback. The CI got into the truck and tried to give the money to Blacksmith. Blacksmith directed the CI to place the money on the center console and then she picked it up and counted it. Bigback then gave the CI the methamphetamine. Task force agents stayed with

the truck after the sale. They obtained photographs of Blacksmith getting out of the vehicle and walking into Ace Hardware. The truck was registered to Blacksmith.

On April 27, 2017, the Billings drug task force used the same CI to purchase approximately 21 grams of methamphetamine from Blacksmith for \$1200. Blacksmith set up this buy with the CI by text messages, and chose the location (the mall), but she sent Bigback to meet the CI at the mall, deliver the methamphetamine, and take the money from the CI. The sale took place in the men's bathroom at Dillard's department store. Task force agents not only surveilled the controlled purchase with a body wire, but a task force agent was in Dillards and photographed Bigback with a mobile phone in the mall going into and leaving the bathroom. Task force agents outside of the mall watched Blacksmith's truck and believed that she was driving. That was later confirmed. After the truck drove away from the mall, a police officer stopped it. Blacksmith was driving and Bigback was a passenger.

The methamphetamine is currently being tested at the DEA laboratory, but there is no dispute that on April 24 and 27, 2018, a CI purchased over five grams of actual methamphetamine from Bigback and Blacksmith.

DATED this 5th day of July, 2018.

KURT G. ALME  
United States Attorney

/s/ Lori Harper Suek  
LORI HARPER SUEK  
Assistant U.S. Attorney